

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS

IN RE MASSACHUSETTS DIET DRUG LITIGATION

*Andrus, et al. v. Indevus Pharmaceuticals, Inc., et al.*

Civil Action No. 04-10911 GAO

Linda Marlene Johnson, Carla S. Alvanchi, Vickie L. Beinlich, Cynthia D. Cargile, Theresa S. Drescher, Terry Robert Gabrich, Sr. and Sharon E. Gabrich; Robert John Golias; Camille Denice Johnson; Edith A. Guffey; Lisa Henkel; Sherry L. Jackson; Linda S. Kennelly; Janice A. Lukacinsky and Sheryl Van Sice; Sally Jane Minzey and Theordore Dale Minzey; Irma Ochoa and Armando Ochoa; Teresa Shuff and Joe Shuff; Bonnie L. Tacy; and, Victoria Vance,

Plaintiffs.

v.

Indevus Pharmaceuticals, Inc., F/K/A Interneuron Pharmaceuticals, Inc.; Wyeth, Inc., F/K/A American Home Products Corporation; Wyeth Pharmaceuticals, Inc F/K/A Wyeth-Ayerst Pharmaceuticals, Inc., A Division Of American Home Products Corporation; and Boehringer Ingelheim Pharmaceuticals, Inc.; Robert R. DeCapua; Justin D. Crum; Bernice J. Menzies; Michelle L. Carner; Larry D. Bayliff; Gerald E. Lubben; Joseph Schrei; Gail S. Rasak, Marlo F. Ponos (a/k/a/ Marlo F. Tate); Michael D. Zell; Gregory Fountain; Mary Ann Roberts; Lyn A. Adanich; Kathleen A. Welsh; Ronald L. Duemler; Dennis M. Thimm; Lance E. Reno; Cynthia M. Cowgill; Timothy S. Circle; Donell N. Henthorne; Melody Phillips-Williams; Steve Sneider; Richard A. Dilibero; Thomas M. Duggan; Jennifer Hetherington; Joanne M. Izykowski; Zoanne H. Pokriefka; Joseph DiFrancesco; Hope Tileston; Thomas A. Wiehn; Lisa M. Birken (a/k/a Lisa Greenbaum); Shonda S. Shores (a/k/a Shonda S. Kim); Christian K. Miner; Kimberly Ann Owen; Mary M. Bodenhamer; Alicia I. McDougal; Shannon O. Sage; and, John Doe.

Defendants.

PLAINTIFFS'  
MOTION TO  
REMAND

Civil Action No.  
04-11427-GAO

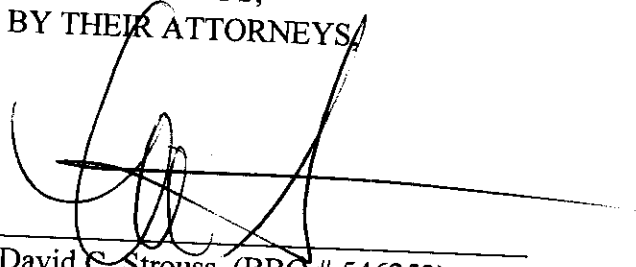
**PLAINTIFFS' MOTION TO REMAND**

Pursuant to 28 U.S.C. § 1447(c), plaintiffs hereby seek to remand this action to the Superior Court of the Commonwealth of Massachusetts, Middlesex County. As grounds for this motion, plaintiffs state that the ground asserted for removal by defendants Wyeth, Inc. f/k/a American Home Products Corporation; and Wyeth Pharmaceuticals, Inc. f/k/a Wyeth-Ayerst Pharmaceuticals, Inc., a Division of American Home Products Corporation (collectively referred to as "Wyeth"), is improper.

More specifically, defendant, Indevus Pharmaceuticals, Inc. f/k/a Interneuron Pharmaceuticals, Inc. ("Indevus"), is a resident of Massachusetts and has not been fraudulently joined. Wyeth cannot meet the high burden for fraudulent joinder as the allegations in the complaint show that plaintiffs have far more than a colorable claims against Indevus.

In support of their motion, plaintiffs have filed a memorandum. In the event that their motion is granted, plaintiffs request that this Court issue an order requiring that the removing defendants pay plaintiffs' just costs and any actual expenses, including attorneys fees, incurred as a result of the removal.

THE PLAINTIFFS,  
BY THEIR ATTORNEYS,

A large, stylized handwritten signature in black ink, appearing to be 'D. Strouss', is written over a horizontal line.

David C. Strouss, (BBO # 546253)  
Marilyn T. McGoldrick, (BBO # 561766)  
THORNTON & NAUMES, LLP  
100 Summer Street, 30<sup>th</sup> Fl.  
Boston, MA 02110  
(617) 720-1333

Ellen A. Presby (Texas State Bar # 16249600)  
Amy M. Carter (Texas State Bar # 24004580)  
Amy J. Shahan (Texas State Bar # 00797564)  
Jory D. Lange, Jr. (Texas State Bar # 24041294)  
BARON & BUDD, A PROFESSIONAL CORPORATION  
3102 Oak Lawn Avenue, Suite 1100  
Dallas, Texas 75219  
(214) 521-3605

DATED: July 23, 2004.

CERTIFICATE OF SERVICE

This is to certify that I have this day served Plaintiffs' Motion for Remand and Plaintiffs' Memorandum in Support of Their Motion for Remand upon all parties to the above-captioned action by first class, postage prepaid mail to the following:

Matthew J. Matule  
Skadden, Arps, Slate, Meagher & Flom, LLP  
One Beacon Street  
Boston, MA 02108

Counsel for Indevus Pharmaceuticals, Inc.  
and Boehringer Ingelheim Pharmaceuticals, Inc.

Michael D. Birnbaum  
Skadden, Arps, Slate, Meagher & Flom, LLP  
Four Times Square  
New York, NY 10036

Counsel for Indevus Pharmaceuticals, Inc.  
and Boehringer Ingelheim Pharmaceuticals, Inc.

William A. McCormack  
Janice Howe  
David Yamin  
Bingham McCutchen, LLP  
150 Federal Street  
Boston, MA 02110-1726

Counsel for Defendants Wyeth and  
Wyeth Pharmaceuticals, Inc.

COURTESY COPY SERVED ON:

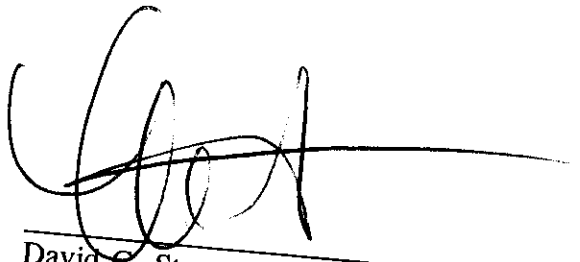
Edward J. Barshak  
Michael S. Appel  
Sugarman, Rogers, Barshak, & Cohen, P.C.  
101 Merrimac Street, 9<sup>th</sup> Floor  
Boston, MA 02114

Michael P. Friedman  
Brickley, Sears, & Sorett, P.A.  
75 Federal Street  
Boston, MA 02110

Dante G. Mummolo  
Iannella and Mummolo  
One Boston Place, Suite 3615  
Boston, MA 02108

Michael R. Hugo  
Lopez, Hodes, Restaino, Milman & Skikos  
95 Commercial Wharf  
Boston, MA 02110

This 23rd day of July, 2004.

A handwritten signature in black ink, appearing to read 'David E. Strouss', written over a horizontal line.

David E. Strouss, (BBO # 546253)  
Marilyn T. McGoldrick, (BBO # 561766)  
Thornton & Naumes, LLP  
100 Summer Street, 30th Floor  
Boston, MA 02110

Ellen A. Presby, (Texas State Bar # 16249600)  
Amy M. Carter, (Texas State Bar # 24004580)  
Amy J. Shahan, (Texas State Bar # 00797564)  
Jory D. Lange, Jr., (Texas State Bar # 24041294)  
Baron & Budd, P.C.  
3102 Oak Lawn Avenue  
Dallas, TX 75219